

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:19-cv-00477-CCE-LPA

THE ESTATE OF NAJEE ALI)
BAKER, by and through his)
Ancillary Administrator,)
Jemel Ali Dixon,)
)
 Plaintiff,)
)
 V.)
)
WAKE FOREST UNIVERSITY, et)
al.,)
)
 Defendants.)
-----)

VIDEOTAPE VIDEOCONFERENCE DEPOSITION
OF
JAKIER S. AUSTIN

MARCH 18, 2021
9:51 A.M. - 12:09 P.M.

NORTH CAROLINA

Reported by: Michelle Maar, RDR, RMR, FCRR

1 Q. A newer car? Okay.

2 A. No, it wasn't.

3 Q. Oh, it was not a newer car. Okay.

4 And can you -- do you remember what model it was?

5 A. No.

6 Q. And was it your car?

7 A. No.

8 Q. Who did it belong to?

9 A. It belonged to my mom.

10 Q. And so were you driving?

11 A. Yeah.

12 Q. And who was in it with you?

13 A. Me, Malik, and Jadakiss.

14 Q. How -- did you go pick them up?

15 A. You said what?

16 Q. Did you pick them up from someplace?

17 A. They were with me.

18 Q. I'm sorry -- I didn't understand you.

19 A. They were with me.

20 Q. Okay. Where were you all coming from?

21 A. From my house.

22 Q. And about what time do you think you headed over
23 to Wake Forest?

24 A. I forgot.

25 Q. Was it daytime or nighttime?

1 A. Nighttime.

2 Q. And why were you going to Wake Forest?

3 A. To go to the party.

4 Q. How did you hear about the party?

5 A. On the internet.

6 Q. Do you remember where on the internet?

7 A. No. One of the social media sites.

8 Q. And you don't -- do you remember which social
9 media site?

10 A. No.

11 Q. Do you know who was hosting the party?

12 A. No.

13 Q. And had you ever been to a party before on Wake
14 Forest's campus?

15 A. Yeah.

16 Q. And had you gone there recently?

17 A. Yeah.

18 Q. And so where did you go, where were you headed to
19 the party on this particular occasion in January 2018?

20 A. You said what?

21 Q. Where were you headed on campus?

22 A. To the party.

23 Q. But where on campus, do you remember?

24 A. To The Barn.

25 Q. Had you ever been to The Barn before?

1 A. Yeah.

2 Q. About how many times had you gone to The Barn
3 before?

4 A. Three or four times.

5 Q. And the times you went before, why were you going
6 to The Barn?

7 A. To go to a party.

8 Q. Now, on this particular occasion, in January
9 2018, when you went, did you have any tickets to go to the
10 party?

11 A. Yeah.

12 Q. When did you get your tickets?

13 A. Online.

14 Q. And did you -- do you remember when exactly you
15 got them online?

16 A. No. I don't know when exactly I got them online.
17 But I got them online.

18 Q. And how many tickets did you get?

19 A. I got three.

20 Q. And did you have those tickets already purchased
21 before you came to campus?

22 A. Yeah.

23 Q. And how many tickets did you purchase?

24 A. I just told you three.

25 MR. FIERBERG: Asked and answered.

1 A. All right.

2 Q. And I might ask you some other details afterwards
3 too, just to give you a heads up.

4 Is that all right?

5 A. All right.

6 Q. Okay. Thank you.

7 What was Malik and Jadakiss doing when you were
8 walking up to The Barn?

9 A. I can't remember all that.

10 Q. Now, when you went up to The Barn, did you have a
11 weapon?

12 A. No.

13 Q. Did you have any type of firearm?

14 A. No.

15 Q. Do you know if Malik did?

16 A. No.

17 Q. Meaning you don't know? Or you know he did not?

18 A. I don't know. I don't know.

19 Q. What about Jadakiss Hall?

20 A. I don't know.

21 Q. Was there a weapon anywhere in your vehicle?

22 A. Yeah, I found that out later.

23 Q. You found out later?

24 A. Yeah.

25 Q. At the time that you parked, did you know if

1 there was --

2 A. No.

3 Q. -- a firearm in your vehicle?

4 A. No.

5 Q. So you did not know, correct?

6 You got to --

7 A. No.

8 Q. So when you went up to The Barn, what happened

9 once you got up there?

10 A. Scanned the ticket and went to the party.

11 Q. Do you remember who scanned your ticket?

12 A. No. I don't remember all that.

13 Q. Do you know if anyone -- oh, I'm sorry, what did
14 you say?

15 A. I said I can't remember who and all that. It's
16 three years ago.

17 Q. And so when you said they scanned your ticket,
18 did they just scan your ticket?

19 A. They scanned all three of them.

20 Q. So when you say scanned -- I'm a little bit
21 older --

22 A. They had a little thing, scanned it.

23 Q. Okay. So they had a little thing that scanned
24 the ticket.

25 Did you have a printout of the ticket in your

1 A. No.

2 Q. Did you see Jadakiss Hall with a gun?

3 A. No.

4 Q. All right. So once you're inside the party, what
5 did you do?

6 A. Start partying.

7 Q. And what did Malik and Jadakiss do?

8 A. Start partying.

9 Q. And did anything unusual happen?

10 A. Yeah. Once we started partying for a minute, and
11 later on down the line, that's when, that's when, that's
12 when the fight broke out.

13 Q. All right. So when you say a fight broke out,
14 what exactly happened?

15 A. All I know, all I know, I just seen them start
16 fighting. I didn't know what led to the fight and all
17 that.

18 Q. So where were you exactly when the fight broke
19 out?

20 A. Standing off to the side.

21 Q. And when you say to the side, you were inside The
22 Barn when it happened?

23 A. Yeah.

24 Q. Were you on the dance floor?

25 A. Yeah.

1 Q. And so you were off to the side on the dance
2 floor?

3 A. Yeah, just standing there.

4 Q. What did you see? Who did you see fighting?

5 A. You said what?

6 Q. Who did you see fighting?

7 A. I seen Najee swing off on Malik. And then there
8 was just a whole bunch of, a whole bunch of fighting then.

9 Q. Now, do you know why --

10 A. I don't know all that. I just told you that.

11 Q. Right. You just looked up and you saw Najee
12 swinging at Malik?

13 A. Yeah.

14 MR. FIERBERG: Objection.

15 BY MS. FULTON:

16 Q. Did you see Malik doing anything?

17 A. No.

18 Q. Did you see Jadakiss doing anything?

19 A. No. They were just partying.

20 Q. Now, was anybody else fighting?

21 A. Yeah. I don't know, I don't know all the other
22 people.

23 Q. But were there other people involved in the
24 fight?

25 A. I guess.

1 Q. Well, when you say I guess, I mean did you see
2 that or --

3 A. Yeah. I --

4 Q. -- do you remember that?

5 A. -- there was other people fighting but I don't
6 know who they are, I don't know who they were.

7 Q. And so once you saw, once you saw Najee swinging
8 on Malik, what did you do?

9 MR. FIERBERG: Objection.

10 THE WITNESS: Started fighting.

11 BY MS. FULTON:

12 Q. Who did you start fighting?

13 A. I guess his homeboy. I don't know.

14 Q. Can you describe who that was?

15 A. No, I can't describe him. It was dark in there.

16 Q. And why were you doing that?

17 A. Because they done start trying to take off on my
18 homeboys, so I started fighting.

19 Q. So you said you were swinging on homeboy, but you
20 don't know who that was, correct?

21 A. No.

22 Q. Had you ever seen that person before?

23 A. I just told you it was dark. I don't know who
24 they was.

25 Q. Now, what about Najee, had you ever seen him

1 before?

2 A. No. I never seen him before either.

3 Q. Did you know who he was?

4 A. I don't even know the guy, never heard of him.

5 Q. So once you started swinging at homeboy, did
6 homeboy swing back?

7 A. He tried to.

8 Q. And then what happened?

9 A. Then it was just a big old brawl.

10 Q. Did you recognize anybody in the brawl?

11 A. No. I just told you I don't know them.

12 Q. Did you hit or fight Najee?

13 A. Huh-huh. Him and Malik was fighting. It was
14 him, him and somebody that was trying to jump Malik at the
15 time. It was somebody big.

16 Q. They were jumping who at the time?

17 A. Malik.

18 Q. So what happened next?

19 A. Once they started breaking up the fight, I left
20 out.

21 Q. Do you remember who was breaking up the fight?

22 A. No.

23 Q. Now, you said you left out. Did you leave with
24 anybody?

25 A. No. I walked out of the door by myself.

1 Q. Did anybody go with you though when you walked
2 out?

3 MR. FIERBERG: Objection. He just said he walked
4 out by himself.

5 MS. FULTON: You can answer.

6 MR. FIERBERG: Objection. Leading.

7 MS. FULTON: You can answer, Mr. Austin.

8 THE WITNESS: I walked out by myself.

9 BY MS. FULTON:

10 Q. Do you know an individual named Brandon
11 Childress?

12 A. Yeah.

13 Q. Do you remember seeing him that evening?

14 A. Yeah. He, they walked out, they walked out after
15 me.

16 Q. So once you walked out, what, how were you
17 feeling when you walked out?

18 A. Straight.

19 Q. When you say you were straight, what do you mean
20 by that?

21 A. I was fine.

22 Q. Did you see what happened to Malik?

23 A. They came, he came, they came out after me.

24 Q. Who is they?

25 A. Him and Jadakiss.

1 It was over with.

2 THE REPORTER: Counsel, this is Michelle, the
3 Court Reporter. I really couldn't hear most of that
4 answer.

5 MS. FULTON: I'm sorry -- can you repeat that Mr.
6 Austin?

7 THE WITNESS: Repeat what part?

8 BY MS. FULTON:

9 Q. Let's start with what happened next.
10 You're walking down the road.

11 A. Yeah. I seen, I seen Malik. I seen he's got a
12 gun in his hand. I take the gun out of his hand and tell
13 him chill.

14 I seen Najee and them coming down. I told them,
15 I told them it was over with, go on about their business.

16 Q. All right. So you saw Malik with a gun?

17 A. Yeah.

18 Q. Do you know where he got the gun from?

19 A. No.

20 Q. Had you ever seen that gun before?

21 A. No.

22 Q. Where was he when you saw him with the gun?

23 A. Standing at the end of the walkway, like on the
24 road.

25 Q. And is this -- you're talking about that road

1 BY MS. FULTON:

2 Q. How did you get the gun?

3 A. I took the gun out of Malik's hand.

4 Q. Why did you take the gun from Malik?

5 A. Because I told him he was tripping.

6 Q. And when you say he was tripping --

7 A. Tried to defuse the situation, but it still ended
8 up going off.

9 Q. How did you try to defuse the situation?

10 A. Because I took the gun out of his hand and told
11 him to chill out.

12 Q. Did Malik chill out?

13 A. Yeah. He chilled out.

14 Q. And what about Mr. Baker?

15 A. When I told him, I told him it's over with,
16 whatever happened was through. He was still coming with
17 aggression. And he acted like he wanted to attack me.

18 Q. When you say he acted like he wanted to attack,
19 what made you think that about how he was acting?

20 A. How he was moving. Then he took off like he was
21 coming toward me.

22 Q. And so did you intend to shoot him?

23 MR. FIERBERG: Objection.

24 THE WITNESS: Did I what?

25 /////

1 BY MS. FULTON:

2 Q. Did you intend to kill him?

3 A. Did I, did I intend to kill him?

4 Q. Yes.

5 A. No. I ain't trying to kill him. But he was
6 coming toward me, so I was defending myself.

7 Q. And then what happened?

8 A. And then I left.

9 Q. How did you leave?

10 A. I hopped in the car and left.

11 Q. Was that the same car that you came in?

12 A. Yeah.

13 Q. And what about Malik Smith? Do you --

14 A. I don't know.

15 Q. -- know where, do you know where he went?

16 A. They took off running. They took off running.

17 Q. When you say they, are you also talking about --

18 A. Him and Jadakiss.

19 Q. Do you know where they went?

20 A. No.

21 Q. Give me one moment.

22 Did you see Malik again after that?

23 A. No. I ain't seen him no more until days later.

24 Q. When you say days later, where did you see him
25 again?

CERTIFICATE OF REPORTER

STATE OF NORTH CAROLINA AT LARGE, to wit:

I, Michelle Maar, RDR, RMR, FCRR, the officer before whom the foregoing videoconference deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me remotely, pursuant to North Carolina Session Law 2020-3, that the testimony of said witness was reported by me through videoconference technology to the best of my ability, and thereafter reduced to writing;

That I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

That I am located in Wake County, North Carolina.

That the deponent sworn by me via videoconference indicated he was located in North Carolina.

Michelle Maar

Michelle Maar, Court Reporter

Notary Public #201628400102

My Commission expires October 4, 2021